OTIS ENERGY, INC.

IBLA 81-189 Decided February 19, 1981

Appeal from decision of the Utah State Office, Bureau of Land Management, declaring that oil and gas lease U-43780 had terminated by operation of law for failure to pay annual rental.

Affirmed.

1. Oil and Gas Leases: Rentals--Oil and Gas Leases: Termination

   An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976).

2. Oil and Gas Leases: Termination

   Reliance upon receipt of a courtesy notice can neither prevent the lease from terminating by operation of law nor serve to justify a failure to pay the full lease rental in a timely manner.

3. Oil and Gas Leases: Termination

   A purported assignment of an oil and gas lease does not relieve the lessee of record of the responsibility to make timely payment of all rentals until such assignment is formally approved by BLM.

APPEARANCES: Douglas C. Baesler, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Otis Energy, Inc., appeals from the November 24, 1980, letter decision of the Utah State Office, Bureau of Land Management (BLM), which declared oil and gas lease U-43780 terminated by operation of law for failure to pay the annual rental on or before October 1, 1980.

Effective October 1, 1979, the Utah State Office, BLM, issued oil and gas lease U-43780 to Clara V. Gherghetta for 640 acres. Gherghetta had filed a simultaneous noncompetitive oil and gas lease offer which was drawn with first priority and which was accepted by BLM.

On August 15, 1980, Otis C. Johnson III, president of appellant corporation, submitted for the approval of BLM a "CERTIFICATION OF QUALIFICATIONS TO HOLD A RECORD TITLE INTEREST IN A FEDERAL OIL AND GAS LEASE," which indicates that Gherghetta assigned her record title interest in oil and gas lease U-43780 to appellant on June 23, 1980.

On November 24, 1980, BLM responded to the aforementioned request with a letter to appellant which stated:

> Assignment affecting title to oil and gas lease U-43780 is returned herewith unapproved.
>
> This lease terminated October 1, 1980, for nonpayment of rental.

Appellant timely appealed the decision and asserted that the notice for payment due was sent to Ms. Gherghetta, who either did not receive notice or forgot to inform appellant of the due date.

[1] Section 31 of the Mineral Leasing Act, as amended by the Act of July 29, 1954, 30 U.S.C. § 188(b) (1976), provides that upon failure of a lessee to pay rental on or before the anniversary date of a lease on which there is no well capable of production of oil or gas in paying quantities, the lease terminates automatically by operation of law. The regulation at 43 CFR 3108.2-1 implements this statute. Furthermore, section 17 of the Mineral Leasing Act, 30 U.S.C. § 226(d) (1976), requires that annual rental for oil and gas leases be paid in advance.

[2] Appellant's reliance on receipt of a courtesy billing notice from the Bureau of Land Management, to itself or the lessee, is without legal basis. As we held in Richard C. Corbyn, 32 IBLA 296 (1977), the fact that a lessee did not receive a courtesy notice can neither prevent the lease from terminating nor serve to justify a failure to pay the lease rental timely. This Department, moreover, is under no obligation to provide such notices, and they are in no sense "bills" in the common understanding of that word. Louis J. Patla, 10 IBLA 127 (1973).

[3] No assignment of interest to appellant having ever been approved, the responsibility for making rental payments remained entirely with the lessee of record. As we held in Leonard A. J. Tancredi, 32 IBLA 325 (1977), "the fact that appellant attempted to assign the lease * * * does not absolve him of paying rental timely, or of complying with the reinstatement requirements, until assignment of the lease is approved by BLM." Similarly, 30 U.S.C. § 187(a) (1976), relating to lease assignments, states that, "Until such approval however [i.e., of a lease assignment], the assignor or sublessor and his surety shall continue to be responsible for the performance of any and all obligations as if no assignment or sublease had been executed." Thus, it was incumbent upon the lessee of record either to make timely payment or to make certain that the rental was paid by appellant. Lynn Schusterman, 29 ILBA 182, 183 (1977); Clarence and Marguerite Zuspann, 18 IBLA 1, 3-4 (1974).

Because appellant has not specifically petitioned for reinstatement of the lease under 30 U.S.C. § 188(b) (1976), no petition for reinstatement having been filed with BLM after receipt of the notice of termination as is required by 43 CFR 3108.2-1, appellant's rights to reinstatement, if any such existed, must be deemed waived. However, even if appellant had made such application, it could not be granted for two reasons: First, because appellant has no cognizable interest in the lease, as the assignment was never approved and, second, because the rental was not paid or tendered within 20 days of the due date, this Department has no authority under the statute to grant reinstatement. 30 U.S.C. § 188. Great Basins Petroleum Co., 36 ILBA 42 (1978); Stanley J. Pirtle, 26 IBLA 348 (1976).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing

Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge